

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

June 24, 2005

**DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 25, 2004

Case Number: TSO-0127

This Decision concerns the eligibility of XXXXXXXXX (the individual) to hold an access authorization¹ under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The individual's access authorization was suspended by the Manager of a Department of Energy (DOE) local office pursuant to the provisions of Part 710. Based on the record before me, I am of the opinion that the individual's access authorization should be restored.

I. Background

The individual is an employee of a contractor at a DOE facility. After learning that the individual had filed a Chapter 7 Bankruptcy Petition in April 2003, the DOE local office conducted Personnel Security Interviews (PSIs) with the individual on May 28 and July 21, 2003. The DOE local office ultimately determined that the derogatory information concerning the individual created a substantial doubt about her eligibility for an access authorization, and that the doubt could not be resolved in a manner favorable to her. Accordingly, the DOE local office suspended the individual's access authorization, and proceeded to obtain authority to initiate an administrative review proceeding.

The administrative review proceeding began with the issuance of a Notification Letter to the individual. See 10 C.F.R. § 710.21. That letter informed the individual that information in the possession of the DOE created a substantial doubt concerning her eligibility for access authorization. The Notification Letter included a statement of that derogatory information and informed the individual that she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding her eligibility for access authorization. The individual requested a

¹Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

hearing, and the DOE local office forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter.

At the hearing convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual and her husband. Both the DOE Counsel and the individual's attorney submitted exhibits prior to the hearing. I closed the record after receiving the transcript of the hearing on December 13, 2004.

I have reviewed and carefully considered the evidence in the record. I have considered the evidence that raises a concern about the individual's eligibility to hold a DOE access authorization. I have also considered the evidence that mitigates that concern. And I conclude, based on the evidence before me and for the reasons explained below, that the security concern has been sufficiently resolved.²

II. Analysis

A. The Basis for the DOE's Security Concern

As indicated above, the Notification Letter issued to the individual included a statement of the derogatory information in the possession of the DOE that created a substantial doubt regarding the individual's eligibility for access authorization. In the Notification Letter, the DOE characterized this information as indicating that the individual "has engaged in unusual conduct or is subject to circumstances which tend to show that she is not honest, reliable, or trustworthy; or which furnishes reason to believe that she may be subject to pressure, coercion, exploitation, or duress which may cause her to act contrary to the best interests of national security." DOE Exhibit 2-2. This statement was based on the individual having filed two Chapter 7 bankruptcies, the first in 1988, and the second in April 2003, as well as other behavior by the individual that the DOE local office maintains "contributed to her financial indebtedness[.]" *Id.* As of her more recent bankruptcy filing, the individual owed \$47,049 to creditors holding unsecured claims (almost all of which involved credit card accounts), and her total liabilities exceeded her assets by \$52,817. *Id.*; DOE Exhibit 3-2 (record of bankruptcy proceeding).

²In reaching my conclusion, I have considered

the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

When the DOE issued the current version of Subpart A of the Part 710 regulations on September 11, 2001, it also published “Adjudicative Guidelines Approved by the President in Accordance With the Provisions of Executive Order 12968” as an Appendix to the regulations. These guidelines explain the security concerns raised by the derogatory information described in the regulations in section 710.8, Criteria. 66 Fed. Reg. 47061, 47067 (September 11, 2001).³

In the present case, at issue is criterion (I) of section 710.8, the most general category of derogatory information. More specifically, the root of the concern in this case is the individual’s handling of her finances. The Adjudicative Guidelines explain the basis for this type of concern in Guideline F, Financial Considerations, stating in relevant part, “An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.” The guidelines further state,

Conditions that could raise a security concern and may be disqualifying include:

- (a) A history of not meeting financial obligations;
- (b) Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (c) Inability or unwillingness to satisfy debts;
- (d) Unexplained affluence;
- (e) Financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern.

Id. The facts set forth in the Notification Letter regarding the individual concern only conditions (a) and (c) above.

I note here that, as pointed out by the DOE Personnel Security Specialist during the individual’s PSI, the filing of a Chapter 7 bankruptcy is “a perfectly legal means of . . . getting out of debt. However, if we see a pattern, a financial irresponsibility over periods of time it could put a person in a security risk . . .” DOE Exhibit 4-1 at 52.

³ Obviously, because these are guidelines, their application is not dispositive in any given case. Ultimately, the “decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.7(a).

The individual does not dispute the basic facts set forth above, nor that those facts create a substantial doubt regarding her eligibility for access authorization. Transcript of Personnel Security Hearing (“Tr.”) at 6. Because I find that the undisputed facts in this case create a substantial doubt regarding the individual’s eligibility for access authorization, the remainder of this decision will focus on whether the security concerns at issue have been resolved.

B. Whether the Security Concerns Have Been Resolved

A hearing under Part 710 is held “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization,” i.e., “to have the substantial doubt regarding eligibility for access authorization resolved.” 10 C.F.R. § 710.21(b)(3), (6). Under the Part 710 regulations, the Hearing Officer is directed to make a predictive assessment as to whether restoring access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a).

The Adjudicative Guidelines discussed above, under Guideline F, Financial Considerations, reference the following

[c]onditions that could mitigate security concerns . . . :

- (a) The behavior was not recent;
- (b) It was an isolated incident;
- (c) The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation);
- (d) The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;
- (e) The affluence resulted from a legal source; and
- (f) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

66 Fed. Reg. at 47067.

The mitigating conditions most obviously present here are described in (c) and (f) above. First, as I will discuss in more detail below, conditions largely beyond the individual’s control contributed significantly to her past financial difficulties (mitigating condition (c)). Second, by having her debts discharged through a Chapter 7 bankruptcy proceeding, the individual has resolved her substantial outstanding debts (mitigating condition (f)). The latter condition is important in that it means the individual is not presently, due to her financial situation, “subject to pressure, coercion, exploitation, or duress which may cause her to act contrary to the best interests of national security.” 10 C.F.R. § 710.8(l).

But, as noted above, I am to make a predictive assessment, and so I also must consider the possibility that the individual will once again accumulate debt, thereby raising the same security concerns anew. *See Personnel Security Hearing*, 26 DOE ¶ 82,780 at 85,711 (1997) (payment of debts does not in itself definitively establish that an individual will conduct his financial affairs responsibly in the future). In fact, it would not be unreasonable to assume that the individual will end up in the same situation, absent some evidence that the conditions that led to her past financial difficulties are no longer present. Fortunately, the circumstances in which the individual finds herself have changed significantly. For this reason primarily, I am convinced that the possibility of the individual once again accumulating substantial debt is quite small.

1. Conditions That Contributed to the Individual's Past Financial Difficulties

a. 1988 Bankruptcy

The record indicates that the individual was married to her first husband in 1987 when, on June 15 of that year, he was in an automobile accident. According to an undated (but apparently contemporaneous) letter from the individual explaining the circumstances leading to her March 31, 1988 bankruptcy filing, the individual states that she was advised by her attorney to declare bankruptcy due to the financial impact of the accident. DOE Exhibit 2-9.

There is, in fact, evidence that there was a substantial financial impact resulting from the accident. The record contains a copy of a insurance claim filed by the individual's first husband for medical bills totaling over \$9,000 due to the accident. It appears that the claim was initially denied, but that after a complaint was filed with a state regulatory agency, the insurance company reimbursed the individual's first husband for \$5,000 (the limit under the policy) of his claimed medical expenses, albeit six months after the accident occurred. In addition, the individual states in the undated letter that her first husband was "unable to work for several months" following the accident. *Id.*

A 1992 credit report on the individual indicates that the March 1988 bankruptcy filing concerned debts totaling approximately \$25,000, though there are no records from the bankruptcy proceeding itself that confirm this amount. DOE Exhibit 3-4. In any case, it is not unreasonable to assume that the financial impact of the husband's unreimbursed medical expenses and his temporary loss of income contributed to those debts, and were major factors in their decision to declare bankruptcy. Not surprisingly, the Adjudicative Guidelines specifically list "medical emergency" and "loss of employment" as two conditions largely beyond a person's control that can contribute to financial difficulties. 66 Fed. Reg. at 47067.

b. 2003 Bankruptcy

There is no question that the individual spent money beyond her means in the years leading up to her March 2003 bankruptcy filing. For example, a 1992 credit report on the individual does not show

past due balances on any credit cards, whereas by 2003 the individual's unsecured debt had ballooned to over \$47,000. DOE Exhibits 3-4, 3-2.⁴ At the hearing, the individual testified that, while she believed at the time that she was exercising good judgment in her handling of finances, she now understands that she was not. Tr. at 61. It is nonetheless important to take into account the context in which this spending took place.

At the hearing in this matter, the individual testified that she divorced her first husband in 1994 because "[h]e's an alcoholic, and he used to hit me and the children." Tr. at 58. At the time of the divorce, the individual's two children were aged 3 and 9. DOE Exhibit 2-3. She further testified that her first husband was supposed to be paying \$376 per month in child support, but that over the period from the 1994 divorce to the 2003 bankruptcy, he had made "maybe ten" payments. Tr. at 59.

Assuming the accuracy of this testimony, the individual's first husband would have, by the time of the individual's 2003 bankruptcy filing, been approximately \$36,000 in arrears on child support payments. Given this, the lack of consistent child support payments almost certainly contributed significantly to the nearly \$53,000 in net debt accumulated by the individual between 1992 and 2003. In this regard, I note that "divorce" is another of the mitigating conditions listed in the Adjudicative Guidelines under "Guideline F: Financial Considerations" as an example of a condition that is "largely beyond the person's control." 66 Fed. Reg. at 47067. Not listed there, but certainly related and even more beyond one's control, is the condition of having to provide for two children without the consistent financial support of the children's' father.

Of course, the purpose of noting conditions contributing to the individual's two bankruptcies is not to excuse financial irresponsibility, any more than the purpose of this proceeding is to cast judgment on a person's past behavior or punish her for that behavior. The purpose of this proceeding is to make a predictive assessment, and taking into account the influence of external conditions on past actions can be helpful in making that assessment. Thus, to the extent that past financial difficulties were due to an unexpected medical emergency, those past difficulties are not as predictive of future financial difficulties as they otherwise might be. Similarly, to the extent that those past difficulties were due to lack of consistent child support, those difficulties are not as predictive of future difficulties where, as in the present case, the individual's children are now aged 14 and 20. DOE Exhibit 2-3.

However, these considerations standing alone, while helpful, would not convince me that the individual's security clearance should be restored. As I discuss below, what gives me more assurance regarding the individual's financial condition into the foreseeable future is a product of the fact that she is now married again, this time to a person who appears to be both financially responsible and financially secure.

⁴ Though the documents do not indicate the portion of this debt due to interest, it is reasonable to assume that interest accounts for a substantial portion of the total. Thus, in fairness to the individual, it should be noted that the entirety of the unsecured debt does not represent money she spent using credit cards.

2. *Current Conditions and Future Outlook*

The individual has been married to her husband since September 2003, though their relationship began over five years ago. Tr. at 11, 12, 23. Her husband testified that, after their engagement in October 2002, he and the individual “started sharing information, thinking about merging our families. And then I started looking at [the individual’s] finances, and it appeared that she had quite a bit of debt. . . . [A]ll of the money that she was making was going to basically cover the bills.” Tr. at 13. “I was concerned about the debt, and so was [the individual] once we started analyzing the situation.” Tr. at 14.

In early 2003, the individual went to her supervisor to discuss her financial situation, “because it was my responsibility as a clearance card holder to report stuff like that.” Tr. at 52. He suggested that the individual try credit counseling. She did, and the credit counseling agency “came up with a budget, and I still wasn’t going to be able to make my – well, I would still be crunched paying all my bills and that it would still affect my credit, . . .” Tr. at 53. As the individual’s husband recalled, “The plan that they had given us was going to take eight to ten years to accomplish. And they said it was going to hurt her credit and that, you know, bottom line was that it wasn’t going to work.” Tr. at 15. The individual then went back to her supervisor and told him that she would probably file for bankruptcy. According to the individual, the supervisor responded, “You wouldn’t be the first, you won’t be the last. It’s not uncommon here at [the facility where the individual was employed] for people to file bankruptcy.” Tr. at 53-54. When the individual then asked her supervisor whether this would cause a problem with her job, “[h]e said he though it would be okay because I was up front on reporting it. I followed all their procedures that I was supposed to.” Tr. at 54.

So the individual and her husband went to see a bankruptcy attorney. They explained that they had been to see a credit counselor, and related what they had been told. Tr. at 16, 54. After analyzing the situation, the attorney recommended filing for Chapter 7 bankruptcy due to the extent of the individual’s debt. *Id.* The individual “expressed a deep concern” to the attorney about her job, to which the attorney responded that “there was no way I could lose my job.” Tr. at 55; *see also* Tr. at 16-17 (husband’s testimony regarding consultations with bankruptcy attorney). The individual filed for bankruptcy in April 2003, and her debts were discharged in August of the same year. DOE Exhibit 3-2. In September 2003, the individual and her husband were married. Tr. at 11.

It seems clear that the individual and her then fiancée arrived at what they considered to be a prudent decision by the individual filing for bankruptcy, given their impending marriage and, as the individual’s husband described it, “thinking about merging our families.” Tr. at 13.⁵ At the hearing, the individual’s husband gave testimony detailing his assets, including his home and two other

⁵ The circumstances surrounding the individual’s decision to file for bankruptcy protection in the present case compare favorably to the kind of abuse of the system demonstrated in other cases before this office. *See, e.g.*, Personnel Security Hearing, 28 DOE ¶ 82,775, Case No. VSO-0386 (2000) (credible testimony that the individual, after planning to file for bankruptcy, went on to accumulate significantly more debt in anticipation of having the additional debt eventually discharged).

properties he owns, based on which the individual appears to have net assets of over \$100,000. Tr. at 39-42. Thus, not only did the individual's filing of a Chapter 7 bankruptcy provide her with a fresh start. It also allowed the "merger" of the two families to begin on a more solid financial footing.

Of course, the individual, through future financial irresponsibility, could jeopardize the financial stability of the merged unit. On the other hand, I note that at the rate of her past debt accumulation (i.e., approximately \$53,000 accumulated over 11 years), it would take about 20 years for her to exhaust the over \$100,000 current net worth of the individual's estate. More importantly, I do not foresee that the individual, in her new marriage, will be nearly as likely to spend beyond the couple's means, for two reasons.

First, by virtue of the combined incomes of husband and wife, there is simply more income available, and there are obvious efficiencies gained by only needing to sustain one household, as opposed to two. Second, the individual's husband appears to be firmly in control of the household finances. For example, he has made certain that the household spending is disciplined enough that they have been able to set aside 5% of their income for savings, and 5% for "tithing." Tr. at 18. Further, all credit card accounts used by the couple are in the husband's name. The individual is named as an authorized user on one of the cards because, as the husband explained, "we live out in a rural setting, and she works probably 40, 45 miles from home, and it's like 90 miles round trip a day, and you never can tell what is going to happen." Tr. at 18. The individual testified that she uses that credit card "[m]aybe a couple of times a month." Tr. at 55.

Q. And you use it for what?

A. For gas and food. Sometimes the girls want to go out to lunch and –

Q. That's fine. And [your husband] and you both keep track of these?

A. Yes, I tell him the day before, can I go to lunch?

Tr. at 55-56.

The individual's husband testified that the couple have joint savings and checking accounts, and that the individual is paid via direct deposit. Tr. at 34. He explained in general his method of handling finances from month to month.

Well, the way it works, basically, is . . . we get paid every two weeks, okay? And the money goes into our checking account. And from there I break down the bills that need to be paid in the beginning of the month, and then at the end of the month. Those that get paid at the beginning of the month, we go ahead and break those out, decide how much we're going to pay on those particular bills. And then we have

money set aside for tithing and for our savings. Then the rest of the money is basically living expense. And if we need clothes, or if we need food or gas, you know, she'll say, well, I need gas. So I say, take a check and go buy gas. And she says, well, I need to go to the grocery store. I say, well, okay, here's a check. Go buy groceries.

Q. I mean, so she takes a check from you?

A. Yes.

Q. Okay. Do you have a set limit, or do you set a limit by, let's say, you know, okay, so much for groceries, and so much for –

A. Not particularly. I just tell her, well, we have this much money to live on until the next paycheck, and this is what we need. So, you know, it's a reasonable thing, you know. If we have three or four hundred dollars left to make it to the next paycheck, she's obviously not going to spend more than that to, you know, buy groceries or whatever. And it just depends on the particular month or particular cycle, because we have – sometimes we have more money at one particular cycle than another. So if we need to buy clothes for our daughter, because she's going to school, or because – or for whatever, we kind of budget that into what we're going to spend, or need to spend that month.

Q. Okay.

A. So everything is pretty much controlled, because, the first priorities are our savings and our tithing, then our bills. And then whatever we have left, well, that's what we live on, but we're not going to go beyond that.

Tr. at 34-36.

Based on the testimony provided at the hearing in this matter, I am convinced that, with the household finances remaining under the control of the individual's husband, it is very unlikely that she will again face the financial difficulties that have marked her past. For her part, the individual has acknowledged that she did not exercise sound judgment in her prior accumulation of debt. From all appearances, she is now living within her means. I see this in part as a reflection of a change in attitude on behalf of the individual regarding spending money. I also see this as a product of the fact that her household income has increased significantly due to marriage.

3. Whether Financial Difficulties in this Case Reflect a General Lack of Judgment

Finally, there is the issue of whether there are unresolved concerns regarding the individual's judgment generally, due to the individual's past financial difficulties, such that it might reflect on her ability to properly safeguard classified matter or special nuclear material. On its face, the individual's financial history should rightly raise at least initial concerns regarding her judgment in general. However, based on a closer look at the individual's situation, I find that any such concern is sufficiently mitigated as to be resolved.

For example, during the individual's PSI, the Personnel Security Specialist persistently probed to determine if the individual had spent money on unnecessary items, for example, by asking the individual at least five times whether she purchased any "major appliances." *See, e.g.*, DOE Exhibit 4-1 ("are you talking about, like what, major appliances, televisions, stereos?"). However, the things the individual described spending money on were more what one would consider necessities, such as towels, food, school clothes, car repairs, furniture, gas, a heater, carpeting, and a rug. *Id.* at 70-96. The individual admitted to purchasing a washer and dryer, but only after a fire at her residence destroyed her old washer and dryer. *Id.* at 74.

This type of spending stands in stark contrast to the degree of detachment from financial reality and clear lack of judgment displayed in other cases before this office. *See, e.g., Personnel Security Hearing*, Case No. VSO-0287, 27 DOE ¶ 82,833 at 85,989 (2000) (individual "spent excessive amounts of money on gambling, especially in the year before his bankruptcy filing, which contributed to the bankruptcy, and continued gambling after the bankruptcy"); *Personnel Security Hearing*, Case No. VSO-0347, 28 DOE ¶ 82,758 at 85,538 (2000) (two years after having filed for Chapter 7 bankruptcy, individual's expenditures, using a government-issued credit card, included "\$300 in music stores, \$76 on what appears to be a Broadway show, and a \$300 cash advance, and apparently all of this on just one Friday in Manhattan.") By comparison, in the present case, the individual's pattern of spending was not so egregious that it reflected a more general defect in the individual's judgment.⁶

Indeed, at least one of the major decisions made by the individual reflects just the opposite. The Notification Letter cited as derogatory information that the individual "changed jobs for an administrative position within [the facility where the individual was employed] in 2002, knowing that she would receive less pay." DOE Exhibit 2-2. However, the individual explained at the PSI that she "would make more than I was making eventually but not right away, no." DOE Exhibit 4-1 at 24. When asked later in the PSI whether she "volunteered to take" the new job, she responded, "Yes, because I knew that within time I would get, you know, a higher salary." *Id.* at 99. At the

⁶ The individual's spending should also be viewed in light of the fact that, as noted above, her first husband was apparently providing only sporadic child support payments. One might argue that the individual should have curtailed her expenditures after it became clear that the father would not be doing his part. On the other hand, had the individual not filled the gap left by her ex-husband's non-payment, she essentially would have deprived her children of a level of support determined under the law to be necessary.

hearing, the individual further explained the nature of the new position, stating that she expected the new job to pay more and offer more opportunity for advancement over the long term. Tr. at 62-64. In my opinion, the individual's rationale for taking the lower-paying job demonstrates good judgment, in that it takes a long-term view of what is financially responsible, in contrast to the poor judgment demonstrated by those who concern themselves with only their immediate financial status.

III. Conclusion

Upon consideration of the record in this case, I find that there is evidence that raises a substantial doubt regarding the individual's eligibility for a security clearance. However, the concern raised by that evidence has been sufficiently resolved, considering both the circumstances that contributed to the individual's past financial difficulties and, more importantly, the changes brought about in her financial standing and behavior due to her current circumstances. Considering these mitigating factors, I conclude that it is very unlikely that the individual will face financial difficulties in the foreseeable future. I further find that the individual's handling of finances does not reflect a more general lack of judgment that would affect her long-term suitability to hold a security clearance. For the above-stated reasons, "after consideration of all the relevant information, favorable and unfavorable," I conclude that restoring the individual's "access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. §§ 710.7(a), 710.27(a).

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: June 24, 2005